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10 Attorneys for Defendant
11 GROUPME, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 BRIAN GLAUSER, individually and on behalf
of a class of similarly situated individuals,

16 Plaintiffs,

17 v.

18 TWILIO, INC., a Delaware corporation; and
19 GROUPME, INC., a Delaware corporation,

20 Defendants.
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CASE NO. 4:11-cv-02584-PJH

**DECLARATION OF BRENT MELLO IN
SUPPORT OF DEFENDANT
GROUPME, INC.'S MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF BRENT MELLO

I, Brent Mello, declare:

1. I am the Brent Mello of Bandwidth.com, Inc. ("Bandwidth") and am responsible for Bandwidth's messaging services. I have personal knowledge of the facts stated herein, or rely on Bandwidth's business records, and can testify to such facts if called upon to do so.

2. I have worked for Bandwidth since 04/15/2013, and have been in my current position since that time. As Vice President of Voice and Messaging Services, I am responsible for development and management of voice and messaging products for Bandwidth. As part of my duties and responsibilities, I am familiar with Bandwidth's product line and the products Bandwidth has offered since it was founded, including Bandwidth's messaging transmission services. I require this knowledge so that I can effectively manage the complexity and profitability of Bandwidth's product lines, while ensuring Bandwidth's products are compliant with industry rules and regulations. I submit this declaration to explain Bandwidth's transmission services.

3. Bandwidth was founded in 1999 with a focus on operating an all Internet Protocol-based network for IP-based communications services. Since 2010, Bandwidth has provided an application programming interface, or "API," to business customers whose developers use the API to create applications and programs. An API is a software language and message format used to communicate with an operating system or other application programs. APIs are typically pre-fabricated blocks of software code which perform certain low-level, but crucial functions.

4. Bandwidth's API acts as a conduit between the traditional telecommunications infrastructure and users of applications developed to transmit messages via Bandwidth's API. When Bandwidth receives information from applications utilizing the Bandwidth API, Bandwidth forwards that information without alteration either directly to downstream telecommunications carriers or to so-called aggregators. Aggregators facilitate the transmission of information from Bandwidth to downstream telecommunications carriers.

5. Bandwidth's API assists its application-developer customers by allowing integration of voice calling and text messaging capabilities with existing programming languages. Developers can create new applications or add features to existing products to allow users of those

1 applications to make and receive phone calls and text messages. Bandwidth's API standing alone
2 does not function as a communications program. Rather, the API is simply the building block of
3 the application created and used by Bandwidth's customers to enable message transmission. In
4 other words, Bandwidth's API is not a finished product.

5 6. Bandwidth's API plays no part in generating, storing or influencing the telephone
6 numbers that are called by users of applications that incorporate Bandwidth's API in order to
7 transmit messages. Bandwidth thus does not control or influence which telephone numbers are
8 called through any application incorporating Bandwidth's API.

9 7. Bandwidth does not provide its customers, including GroupMe, Inc. ("GroupMe"),
10 with equipment that has the capacity to store or produce telephone numbers using a random or
11 sequential number generator to dial such numbers. Bandwidth neither provides nor utilizes such
12 equipment for the transmission services Bandwidth provides its customers. Instead, and as stated
13 above, Bandwidth provides its customers, including GroupMe, with an API -- or lines of software
14 code -- that enables message transmission and access to transmission services.

15 8. Bandwidth does not provide or change the content or the telephone numbers
16 provided to be called for any message transmitted via Bandwidth's API. Nor does Bandwidth store
17 or generate any numbers to be called. Bandwidth does not utilize a number generator in connection
18 with its transmission service, and its transmission service does not have the capacity to generate
19 random or sequential numbers to be called. Bandwidth provides, and since at least 2012 has
20 provided, GroupMe an API as described above. The API has never been able to generate random
21 or sequential telephone numbers to be dialed.

22 9. In sum, both the content of the message and the telephone numbers of the message
23 recipient(s) have already been selected by the application user before this information reaches
24 Bandwidth and Bandwidth simply passes this information along to the downstream entities that are
25 ultimately responsible for delivering the message. The lines of software code contained in
26 Bandwidth's API have no role in influencing or producing the telephone numbers that the
27 application user selects to be called, as the API simply enables message transmission. The core
28 function of Bandwidth's API as used by GroupMe is, and always has been, merely to route

1 messages directed by others. It would be incompatible with this core function to re-write code
2 associated with Bandwidth's API to add random or sequential number generation capabilities, as
3 Bandwidth's business would have no purpose for such functionalities.

4 I declare under penalty of perjury that the foregoing is true and correct under the laws of
5 the United States of America.

6 Executed this 28th day of April, 2014, in Denver, Colorado.

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Brent Mello